

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**TRACY DAVIS,**

**Plaintiff,**

**v.**

**Case No. 1:15-cv-00743-JAP-WPL**

**GARDNER TURFGRASS, INC.,  
and GILBERT JONES,**

**Defendants.**

**AFFIDAVIT OF STAN GARDNER**

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF ADAMS        )

I, STAN GARDNER, after being duly sworn upon my oath, state as follows:

1. I am over the age of eighteen years; have personal knowledge of the information set forth in this Affidavit or knowledge based upon my review of my company's business records related to this matter; and am competent to testify regarding this information.

2. Gardner Turfgrass, Inc. ("GTI") is a Colorado corporation with its principal place of business is in Westminster, Colorado.

3. I am Vice President of GTI.

4. I reside in Broomfield, Colorado.

5. GTI operates two sod farms in McIntosh and Santa Teresa, New Mexico, in addition to its Colorado locations.

6. GTI employed Plaintiff TRACY DAVIS ("Plaintiff") at its McIntosh, New Mexico farm.

7. Human resources functions for all GTI locations during Plaintiff's employment were and continue to be conducted out of GTI's Colorado headquarters.

8. GTI is in the process of selling its New Mexico farms and I am managing the New Mexico operations from GTI's Colorado headquarters.

9. There are only three employees in GTI's Colorado headquarters – myself and two other employees who have approximately six months experience. There is no office manager at GTI's McIntosh location.


10. I am the only employee in GTI's Colorado headquarters with sufficient experience to manage GTI's day-to-day operations, including scheduling cut sheets, delivery sheets, and everything else related to sod sales for the Colorado and McIntosh, New Mexico operations.

11. I perform these duties in addition to my duties as Vice President of GTI, including being the direct report for GTI's operations.

12. Usually by late morning on Fridays, I have completed filling GTI's orders for the week, and new orders for the following week come in over the weekend.

13. April is part of the busiest season for GTI during which it generates up to half of its annual income in the spring months and GTI cannot afford to have me absent from the workplace for an extended period of time to provide a deposition in New Mexico.

FURTHER AFFIANT SAYETH NOT



STAN GARDNER

SUBSCRIBED and SWORN to before me this 29<sup>TH</sup> day of March, 2016, by STAN  
GARDNER.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

4829-4282-8847

**Montoya, Victor P. (Albuquerque)**

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**From:** Montoya, Victor P. (Albuquerque)  
**Sent:** Friday, March 18, 2016 5:16 PM  
**To:** 'Susan Chappell'; Mark Jaffe  
**Cc:** crm@keleher-law.com; amc@keleher-law.com; jr@keleher-law.com; Alarcon, Liz Nuanes (Albuquerque); sbasley@thejaffelawfirm.com  
**Subject:** RE: Davis v. Gardner

Sue:

Mr. Gardner is not available for his deposition on April 6, 2016 in Albuquerque. I will not rehash our objections to how the depositions were set.

I note that you state you are not available on April 8, our suggested alternative date for Mr. Gardner's deposition. By way of explanation, Gardner Turfgrass, Inc. ("GTI") is selling its New Mexico farms. While the sale is proceeding, Stan Gardner is managing the New Mexico operations out of GTI's principal place of business in Denver. There are only three employees, including Mr. Gardner, in the Denver office. The other two employees cannot perform Mr. Gardner's duties. At the present time, Mr. Gardner is responsible for scheduling cut sheets, delivery sheets, and everything else related to sod sales for the Colorado and McIntosh operations. These duties are in addition to the other work he performs as Vice President of GTI, including being the direct report for operations.

Your assumption that Mr. Gardner can fly to Albuquerque and back in one day does not account for the additional time it will take for Mr. Gardner to prepare for his deposition. Further, Mr. Gardner likely would have to drive to Albuquerque, which would keep him out of the office for a minimum of three days. We suggested deposing Mr. Gardner via videoconference on a Friday beginning at 10:00 a.m. in Denver so he can fulfill any remaining orders for the week prior to his deposition. New orders then start coming in over the weekend for the following Monday. Mr. Gardner simply cannot afford to be absent from work during the busiest time of the season for his company. Based on the foregoing, Mr. Gardner is willing to attend a videoconference deposition in Denver on Friday, April 1, 2016 beginning at 10:00 a.m. We trust this proposal is acceptable to you given the present circumstances, since it will allow Mr. Gardner to fulfill his work obligations, avoid any undue hardship on GTI's operations, and permit plaintiff to conduct her necessary discovery.

Victor P. Montoya  
Attorney at Law  
Jackson Lewis P.C.  
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Suite B-260  
Albuquerque, NM 87110

505.830.8251 – Direct  
505.878.0398 – Fax

Board Certified Specialist in Employment and Labor Law  
New Mexico Board of Legal Specialization

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**From:** Susan Chappell [mailto:susangchappell.law@gmail.com]  
**Sent:** Friday, March 18, 2016 9:48 AM  
**To:** Mark Jaffe  
**Cc:** Montoya, Victor P. (Albuquerque); crm@keleher-law.com; amc@keleher-law.com; jr@keleher-law.com; Alarcon, Liz

**Montoya, Victor P. (Albuquerque)**

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**From:** Mark Jaffe <msj01@aol.com>  
**Sent:** Monday, March 21, 2016 10:08 AM  
**To:** Montoya, Victor P. (Albuquerque); susangchappell.law@gmail.com  
**Cc:** crm@keleher-law.com; amc@keleher-law.com; jr@keleher-law.com; Alarcon, Liz Nuanes (Albuquerque); sbeasley@thejaffelawfirm.com; MSJ01@aol.com  
**Subject:** Re: Davis v. Gardner

Mr. Montoya;

Just so it is clear we continue to maintain that Mr. Gardner should appear in New Mexico for his deposition. If you disagree please file whatever Motion you think is appropriate. If the problem is that you need to change the date of the deposition to make it more amenable to Mr. Gardner's schedule and to your schedule please propose alternative dates to take his deposition in New Mexico.

Mark

Mark S. Jaffe

**The Jaffe Law Firm**  
1001 Gold Ave SW  
Albuquerque, NM 87102

Mailing: PO Box 809, Albuquerque, NM 87103

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-----Original Message-----

**From:** Montoya, Victor P. (Albuquerque) (Albuquerque) <montoyav@jacksonlewis.com>  
**To:** Susan Chappell <susangchappell.law@gmail.com>; Mark Jaffe <msj01@aol.com>  
**Cc:** crm <crm@keleher-law.com>; amc <amc@keleher-law.com>; jr <jr@keleher-law.com>; Alarcon, Liz Nuanes (Albuquerque) (Albuquerque) <liz.alarcon@jacksonlewis.com>; sbeasley <sbeasley@thejaffelawfirm.com>  
**Sent:** Fri, Mar 18, 2016 5:16 pm  
**Subject:** RE: Davis v. Gardner

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

TRACY DAVIS,

Plaintiff,

v.

15cv743 JAP/WPL

GARDNER TURFGRASS, INC.,  
and GILBERT JONES,

Defendants.

**AMENDED NOTICE OF DEPOSITION OF GILBERT JONES VIA SKYPE,  
AND STENOGRAPHIC MEANS**

TO: Gilbert Jones  
c/o Ann Conway  
Keleher & McLeod, P.A.  
PO Box AA  
Albuquerque, NM 87103

PLEASE TAKE NOTICE that pursuant to Rule 30(b) (3) and 30 (b)(4) Plaintiff will take the deposition of Gilbert Jones, upon oral interrogatories, on Monday, April 11, 2016 at 1:30 p.m. Eastern Standard Time (11:30 a.m. Mountain Standard Time), at the offices of Cook & Wiley, 3751 Westerre Parkway, Suite D-1, Richmond, VA 23233 (phone number 804-359-1984) before a certified court reporter and notary public from the offices of Cook & Wiley, Inc. The Court Reporter's Stenographic transcript will be the only method by which this deposition will be recorded.

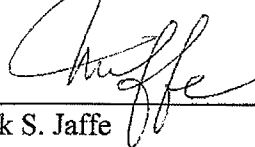
Plaintiff will be initiating the call through Skype at her attorney's office at 1001 Gold Avenue SW at 11:30 a.m. MST, to Mr. Jones attorney's Skype account, installed on

her iPad. A backup laptop with Skype installed, will be available at the Reporters' office if there are any Skype connection issues related to Mr. Jones' attorney's Skype account. Ms. Conway is to provide Plaintiff with her Skype account name so Plaintiff can make the connection.

Plaintiff will mark exhibits she intends to use at this deposition and provide the Court Reporter with copies of the exhibits prior to the deposition: one for the record and Defendant Jones, and one for Counsel Conway.

Plaintiff gives notice that all or part of this deposition may be used at trial pursuant to Rule 32 of the Rules of Civil Procedure for the District Courts.

**THE JAFFE LAW FIRM**



Mark S. Jaffe  
*Attorneys for Plaintiff*  
Post Office Box 809  
Albuquerque, NM 87103  
505-242-9311

And

**The Susan G. Chappell Law Firm**

Susan G. Chappell  
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